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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/797,666	03/08/2004	James M. Brugger	53951-097	3932
21890 7590 04/19/2007 PROSKAUER ROSE LLP PATENT DEPARTMENT 1585 BROADWAY NEW YORK, NY 10036-8299			EXAMINER HAND, MELANIE JO	
			ART UNIT	PAPER NUMBER
			3761	
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		04/19/2007	PAPER	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

# Office Action Summary

Application No.

10/797,666

Applicant(s)

BRUGGER ET AL.

Examiner

Melanie J. Hand

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3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 22 January 2007.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 6-9 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 6-9 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Response to Arguments*

Applicant's arguments filed January 22, 2007 have been fully considered but they are not persuasive.

With respect to applicant's arguments regarding the rejection of claims 6-8 under 35 U.S.C. 102: Applicant argues that the pressure sensor 83 taught by Truitt does not anticipate the claimed sensor because said pressure sensor is used for monitoring the filter and the circuits. First, pressure sensor 83 is configured to sense pressure in the secondary chamber (Col. 6, lines 12-15), which is the non-blood side of the filter 40. This citation is in fact one of the citations stated in the Office action, contrary to applicant's assertion.

With respect to applicant's arguments regarding newly presented claim 9, Truitt does teach a controller with a sensor to detect pressure on the non-blood side of the filter and to vary a rate of flow of the pump such that a constant pressure is maintained in the arterial blood line. Examiner cites the following from the claimed disclosure: By sensing waste fluid pressure by sensor 132, the machine 16 also indirectly monitors arterial blood pressure. At a constant blood pump speed, changes in arterial blood flow caused, e.g., by access clotting or increased arterial blood pressure, makes less waste fluid available in the waste line 118. (Specification, Page 44, lines 19-24) Truitt also teaches this method of monitoring arterial blood line pressure and sends a signal to the controller that regulates the speed of an arterial pump to maintain a constant predefined pressure in the arterial blood line. The specific teachings of Truitt that anticipate these limitations are stated in detail in the rejection of claim 9 herein.

***Claim Rejections - 35 USC § 102***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 6-9 are rejected under 35 U.S.C. 102(b) as being anticipated by Truitt et al (U.S. Patent No. 5,762,805).

With respect to **Claim 6**: Truitt teaches a blood treatment system 30, comprising: a filter 40; an arterial blood line 34 connectable to a patient access (collectively, 33,36) and adapted to convey blood from said patient access to a filter 40 having a blood side 44 and a non-blood side 46 on opposite sides of the membrane 42 of said filter 40; a venous blood line 35 connectable to said patient access and adapted to convey blood from said filter to patient access; and a pump 52 configured to convey blood through said arterial blood line 34, a sensor 83 is configured to sense pressure in said non-blood fluid side 46 of said filter, and a controller (comprising monitoring computer 104 and control computer 102) connected to receive a pressure signal from said sensor 83 and to control a rate of flow of said pump 52 (Col. 6, lines 43-56, Col. 6, line 65 – Col. 7, line 2, Col. 7, lines 11-13, Col. 8, lines 1-6); said controller 48 being configured to maintain a constant pressure in said arterial blood line 34 by regulating a speed of said pump in response to said pressure signal. (Col. 3, line 59 – Col. 4, line 27, lines 32-44, Col. 5, lines 47-61, Col. 6, lines 12-15, 43-60, Col. 18, lines 11-16)

With respect to **Claim 7**: Truitt teaches that said controller 102 is a microcomputer programmed to compare said pressure signal with a predetermined value (i.e. blood pressure in the return vein). (Col. 4, lines 37-39, Col. 6, lines 43-60, Col. 7, lines 43-45)

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With respect to **Claim 8**: The predetermined value, i.e. blood pressure in the return vein, corresponds to a positive pressure.

With respect to **claim 9**: Truitt teaches a blood treatment system, comprising:

a filter 40 with a blood side 44 and a non-blood side 46 separated from the blood side by a membrane 42 (Col. 4, lines 7-11); an arterial blood line 34 that conveys blood from a patient access (collectively 33,36) to the filter blood side 44 and a venous blood line 35 connected to the filter blood side 44 that conveys blood back to the patient access 33,36 (Col. 3, line 59 – Col. 4, line 27); and a blood pump 52 that conveys blood through the arterial blood line 34, a controller with a sensor 83 to detect pressure on the filter non-blood side 46 and to vary a rate of flow of the pump such that a constant predefined pressure is maintained in the arterial blood line. (Col. 6, lines 43-56, Col. 6, line 65 – Col. 7, line 2, Col. 7, lines 11-13, Col. 8, lines 1-6, Col. 18, lines 11-16)

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melanie J. Hand whose telephone number is 571-272-6464. The examiner can normally be reached on Mon-Thurs 8:00-5:30, alternate Fridays 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Melanie J Hand  
Examiner  
Art Unit 3761

April 13, 2007



**TOM BARRETT**  
PRIMARY EXAMINER  
TECHNOLOGY CENTER 3700